

# Order

Michigan Supreme Court  
Lansing, Michigan

September 24, 2008

Clifford W. Taylor,  
Chief Justice

135546

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

DAVID ROMAIN and JOANN ROMAIN,  
Plaintiffs-Appellees,

v

SC: 135546  
COA: 278591  
Wayne CC: 05-512147-NO

FRANKENMUTH MUTUAL INSURANCE  
and IAQ MANAGEMENT, INC.,  
Defendant,

and

INSURANCE SERVICES CONSTRUCTION,  
Defendant-Appellant.

On order of the Court, the motion for rehearing is considered, and it is GRANTED. This Court's opinion of July 23, 2008 is VACATED. The application for leave to appeal the November 21, 2007 order of the Court of Appeals is again considered, and it is GRANTED. The parties shall include among the issues to be briefed whether the Legislature's use of the term "proximate cause" in MCL 600.6304 conflicts with other statutory provisions, whether the Legislature intended to impose a legal duty requirement as a precondition for allocating fault under MCL 600.2957 and MCL 600.6304, and whether, if MCL 600.6304 merely codified the common law doctrine of negligence, a finding of duty is a prerequisite to a finding of fault.

The Clerk of the Court is directed to place this case on the January 2009 session calendar for argument and submission. Appellant's brief and appendix must be filed no later than November 10, 2008, and appellees' brief and appendix, if appellees choose to submit an appendix, must be filed no later than December 12, 2008.

The Michigan Association for Justice and Michigan Defense Trial Counsel, Inc. are invited to file briefs amicus curiae, to be filed no later than December 26, 2008. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae, with such briefs to be filed no later than December 26, 2008.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 24, 2008

*Corbin R. Davis*

Clerk